IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FOURTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 15033 of 2004

Between:

Nayar Hussain, S/o. Late Kurseed Hussain,
R/o.H.No.11-5-310, Bazar Ghat, Hyderabad.(Sc.No.B-2000463)

..... PETITIONER

AND

1 Transmission Corporation of A.P. Limited, (A.P. TRANSCO) Rep. by its

Chief Managing Director,Vidyut Soudha, Khairatabad, Hyderabad.
2 The Assistant Divisional Engineer, (Electrical), Operation, Distribution-II

City-VII, Central Power Distribution Company of A.P. Limited, A.C. Guards,

Hyderabad.
3 The Divisional Engineer, Assessments, A.P.C.P.D.C.L.,
Urdu Hall Galli, Himayatnagar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the provisional assessment notice in letter No.ADE/D-II/C-VII/ACG/F.No.42/D.No.160/04, dated 17-8-2004 of the 2nd respondent as highly illegal, arbitrary, unjust and contrary to Section 126 of the Electricity Act, 2003 and consequently set aside the same.

Counsel for the Petitioner: MR.D.V.NAGARJUNA BABU

Counsel for the Respondent No.: MR.KANAKAMEDALA RAVINDRA KUMAR

The Court at the admission stage made the following :

ORDER:

Petitioner seeks a writ of Mandamus declaring the impugned Provisional Assessment Notice No.ADE/D-II/CC-VII/ACG/F.No.42/D.No.160/04,dated 17.08.2004 issued by the second respondent as arbitrary and illegal and contrary to Section 126 of the Electricity Act, 2003 (for short 'the Act') and consequently set aside the same.

Petitioner states that he is running a tailoring shop in a small mulgi bearing house No. 11-5-310, Bazar Ghat, Hyderabad. The said mulgi is having a L.T. Service Connection (commercial) obtained from the erstwhile A.P.S.E.B. He states that he has been paying the consumption charges in respect of the said service connection regularly. While so, the petitioner was served with the impugned notice dated 17.08.2004 stating that the premises in occupation of the petitioner was inspected on 30.07.2004 by ADE/DPE-I/Hyd(C) and from the said inspection it was found that the TC Seal as well as the meter side seals are not in good condition. It was also found that both the MRT seals provided to meter cover are tampered and extra impressions and dent marks are there and that a study of his past record of consumption discloses that the consumption being recorded by the meter is unduly low, which *prima-facie* indicates that the petitioner is guilty of pilferage of energy and accordingly the power supply to the petitioner's service connection has been disconnected and he was informed that an inquiry will be made into the matter by the Superintendent Engineer, who will fix the amount of loss sustained by the company. Further, he was informed that the value of the energy pilfered by the petitioner has been provisionally

estimated at Rs.62,330/- and if he is desirous of obtaining restoration of supply pending enquiry, he may pay Rs.31,165/- being half of the estimated amount plus reconnection charges.

The learned counsel for the petitioner contends that the assessment made under the impugned notice purportedly in exercise of power under Condition No.39 of Terms and conditions of supply is untenable in view of the provisions of the Electricity Act, 2003 which come into force with effect from 10-12-2003. He contends that the impugned notice is not in consonance with the provisions of the Electricity Act, 2003 and that the impugned action of demanding 50% of provisionally estimated amount for restoration of power supply is not contemplated under the said Act. It is also to be noted that a Division Bench of this Court in Writ Appeal Nos.452 and 477 of 2004, while considering the scope of the provisions of the Electricity Act, 2003 held that under the Act there is no power, while issuing provisional assessment to forthwith step or disconnect power supply or call upon to pay even part of the provisional assessment amount till final assessment is made.

In the circumstances, and following the ratio laid down by the Division Bench in the above case, I am of the view that the impugned notice cannot be sustained. Accordingly, the impugned Provisional Assessment Notice dated 17.08.2004 is set aside and it is left open to the Assessing Authority to make a final assessment in accordance with law after affording opportunity to the petitioner to submit his explanation.

Accordingly, the writ petition is disposed of at the admission stage with a further direction to the respondents to restore the power supply to the petitioner's service connection bearing No. B2000463 Service Category LT2 – Non-Domestic and Commercial at H.No. 11-5-310, Bazar Ghat, Hyderabad, forthwith. No order as to costs.

24-08-2004

klp

To

1 Transmission Corporation of A.P. Limited, (A.P. TRANSCO) Rep. by its

Chief Managing Director,Vidyut Soudha, Khairatabad, Hyderabad.
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